

October 25, 2019

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary

Federal Communications Commission  
445 12th Street, S.W., Room TW-B204  
Washington, DC 20554

**Re: Notice of Ex Parte in WC Docket Nos. 19-126 and 10-90**

Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules<sup>1</sup>, we hereby provide notice of this written ex parte letter in connection with the above-captioned proceedings and respectfully request this letter be added to the corresponding records.

Each year Broadband business owners accessing funding must get a Letter of Credit that is used by the FCC as security in the event that the operator doesn't fulfill it's obligations to perform under the rules of the Connect America Fund / Rural Digital Opportunity Fund – specifically build-out criteria, and speed and latency. Therefore, the bank's primary risk that they must underwrite to, each year during the build-out, is the operator's performance relative to it's plan and contractual obligations. However, that is impossible for banks because the FCC has not defined how specifically they will measure the performance criteria; and results in the bank being unable to define the risk and instead underwriting to other collateral and performance. As the letter gets exponentially larger each year, it will also become exponentially more difficult for banks to underwrite the risk given no clarity on how they are performing relative to the contractual obligation and the likelihood that the letter will be drawn. This will result in letters of credit becoming cost prohibitive, or unavailable for operators. This can be resolved by publishing exact, detailed measurement criteria in advance of year 2, that can be effectively measured and monitored by lending institutions that will underwrite to an operator's ability to meet the build-out criteria and to perform under their contractual obligations.

Additionally there is currently no provision in the rules to allow for a pro rata reduction in the ongoing Letter of Credit amount committed even when an operator meets the build-out thresholds stipulated in the program. This adds a burden to the Broadband operator receiving subsidies which add to increased cost and possibly reduced eligibility for Letters of Credit.

Sincerely,

John Scrivner

VP of Broadband Lending

Live Oak Bank

<sup>1</sup> 47 C.F.R. § 1.1206

